UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 672

Case No. 635: BURTIS

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 12 August 1993, Farida Ghani Burtis, a former staff member of the United Nations, filed an application in which she requested, in accordance with article 12 of the Statute of the Tribunal, the revision of Judgement No. 575, rendered by the Tribunal on 13 November 1992;

Whereas the Respondent filed his answer on 10 September 1993;

Whereas the Applicant filed written observations on 30 September 1993;

Whereas, on 28 October 1993, the Respondent filed an additional statement;

Whereas on 11 November 1993, the Applicant submitted an additional statement;

Whereas, on 10 October 1994, the Applicant submitted an additional statement, together with additional documents;

Whereas, on 18 October 1994, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the facts in the case have been set forth in Judgement No. 575.

Whereas the Applicant's principal contentions are:

1. Judgement No. 575 characterizes the Applicant's claims inaccurately. She did not claim that she was not appointed because of adverse information in her official status file, but that falsified information, inserted without her knowledge in other files, was considered in connection with her candidature.

2. The Applicant has new information in the form of a tape recording, in which UN officials admit to a deliberate falsification of the Applicant's official UN record in order to prevent her from being offered the post for which she applied.

Whereas the Respondent's principal contentions are:

1. The legal framework for revision of Tribunal judgements is restrictively defined by article 12 of the Tribunal's Statute.

2. The Applicant discloses no basis for the revision of Judgement No. 575, pursuant to article 12 of the Tribunal's Statute.

The Tribunal, having deliberated from 19 October to 4 November 1994, now pronounces the following judgement:

I. The Applicant requests, pursuant to article 12 of the Statute of the Administrative Tribunal, revision of Judgement No. 575. In that judgement, the Tribunal held that it was not competent to receive the application, as the claims and the status of the Applicant fell outside the scope of the Tribunal's jurisdiction, as defined in article 2 of its Statute. The Tribunal finds that the Applicant does not have standing to bring a claim pursuant to the requirements of article 2 of its Statute.

II. The Tribunal finds nothing in the Applicant's request which could justify a revision of the previous decision. The Tribunal

finds that the Applicant does not allege any new facts of such a nature as to be a decisive factor warranting a revision of the judgement, under article 12 of the Tribunal's Statute. Nevertheless, in view of the importance of some of the issues raised by the Applicant, the Tribunal wishes to offer the following comments.

III. Article 12 provides as follows:

> "The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties." (Emphasis added)

In order to avail herself of the remedy found in article 12, the Applicant had to satisfy certain conditions. Firstly, she had to demonstrate that the decisive fact on which she is basing her appeal was unknown to her at the time Judgement No. 575 was given. Secondly, the application for revision must be made within thirty days of the discovery of the fact the Applicant is alleging and within one year of the date of the judgement.

IV. It appears from the application that the fact on which the Applicant relies, to entitle her to revision under article 12, is that the members of the Administrative Tribunal who rendered Judgement No. 575 may not have known that they "put their signatures on a judgement in which Applicant's claims have been misrepresented ..."

The Tribunal is of the view that the Applicant has not proven to the Tribunal's satisfaction that her claims were misrepresented. The Tribunal has consistently held that the burden of proof rests upon the party making a positive affirmation, which in this case the Applicant has failed to discharge.

V. The Applicant also claims that she has "additional material of a decisive nature, which was not obtainable at the time the judgement was given". The material consists of "a tape in which UN officials admit to a deliberate falsification of [the] Applicant's official UN record, so that someone else may get the position". She requests that she be given an opportunity, during an oral hearing, to play this tape.

Having reviewed the application dated 15 November 1991, filed by the Applicant to institute the proceedings which led to Judgement No. 575, the Tribunal notes that the Applicant had the tape in her possession at that time. The fact that she chose not to submit it to the Tribunal then, warrants denial of her request to re-open the case under article 12, which makes it clear that facts known to a party before the judgement are not a ground for revision. This is fully in accord with the normal judicial doctrine of res judicata.

VI. The second condition that must be satisfied to fulfil the requirements of article 12 is a procedural one: the application for revision must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. In other words, once the decisive fact is discovered, the Applicant must file the application for revision within 30 days thereof. In addition, this can be done only within one year following the date of the judgement in question.

VII. The Tribunal has already noted that the discovery of the tape was made prior to 15 November 1991, the date of the initial application. The Applicant thus failed to satisfy the first part of the condition. With respect to the second part of the condition,

the Tribunal would agree with the Applicant's contention that the date of Judgement No. 575 is 13 November 1992 and that she was within the one year time-limit, notwithstanding the fact that her application pursuant to article 11 was rejected on 16 July 1993, by the Committee on Application for Review of Tribunal Judgements.

VIII. Based on the foregoing considerations, the Tribunal concludes that even if she had standing, the Applicant would not have met the necessary conditions to obtain a revision of Judgement No. 575 pursuant to article 12.

IX. For the foregoing reasons, the application is dismissed in its entirety.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

New York, 4 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary

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SEPARATE OPINION BY MR. LUIS DE POSADAS MONTERO

I have signed the present judgement only on account of its negative outcome. My opinion is, that the Tribunal, after having ascertained that the new facts submitted by Ms. Burtis in no way altered her status, should have added no further considerations to its judgement.

The Tribunal found in Judgement No. 575 that Ms. Burtis, according to article 2.2 of its Statute had no standing to come before it. The only new fact that could warrant a revision of such a conclusion would be one that would invalidate it by demonstrating that Ms. Burtis could be admitted as a party before the Tribunal. This has not been the case; the new facts submitted by Ms. Burtis do not give her standing before the Tribunal. Therefore, in my opinion, the Tribunal should have rejected Ms. Burtis' allegations *in limine* on the grounds of her lack of standing without addressing itself to the question of whether the requirements of article 12 of the Statute had been met.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

New York, 4 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary